

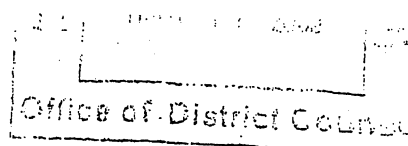


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

March 3, 2003



OFFICE OF THE
REGIONAL ADMINISTRATOR

Via Fax and Mail:

Dr. Barry R. Wallerstein, PhD.
Executive Officer
South Coast Air Quality Management District
21865 E. Copley Drive
Diamond Bar, CA 91765-4182

RE: Notice of Revocation of Delegation of PSD Authority

Dear Dr. Wallerstein:

By this letter, the Environmental Protection Agency (EPA), Region 9, is notifying you that effective Monday, March 3, 2003, we are revoking and rescinding your authority to implement the Prevention of Significant Deterioration (PSD) program for issuing and modifying federal permits for new and modified major sources of attainment pollutants.

Region 9 had transferred PSD authority to the South Coast Air Quality Management District (District) pursuant to 40 C.F.R. § 52.21(u) and the delegation agreement dated January 15, 1997. A copy of the delegation agreement is attached. The delegation agreement was based on EPA's determination that your Regulation XVII generally met the requirements of 40 C.F.R. § 52.21. EPA, therefore, concluded that "District permits issued in accordance with the provisions of Regulation XVII will be deemed to meet federal PSD permit requirements pursuant to the provisions of the delegation agreement." Attachment at p. 1.

On December 31, 2002, EPA published a final rule revising certain portions of 40 C.F.R. § 52.21. Based on our discussions with your counsel and counsel from the California Air Resources Board, we have determined that your Regulation XVII may no longer generally meet the requirements of 40 C.F.R. § 52.21 (as revised), and that we cannot ensure District permits issued pursuant to Regulation XVII will fully implement our regulations as revised.

Paragraph 2 of the delegation agreement provides that EPA may revoke the delegation agreement, after consultation with the District, upon a determination by the Regional Administrator that the PSD program is not being implemented according to the requirements of 40 C.F.R. § 52.21. For the reasons discussed above, we are determining that as of March 3, 2003

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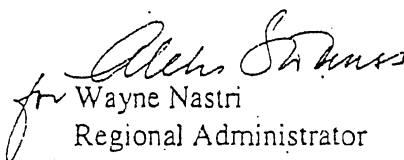
Attachment 1

(when our regulatory revisions become effective), the District will not be able to implement the PSD program according to our revised 40 C.F.R. § 52.21. This letter constitutes notice of our determination to revoke the delegation agreement. We will subsequently publish a notice of this action in the Federal Register.

If you revise your Regulation XVII or determine that you can fully implement the provisions of 40 C.F.R. § 52.21, as revised, without making revisions to Regulation XVII, you may certainly request, and we will work with you to provide, a revised delegation agreement.

We understand that there may be PSD permits in process at the District. Please have your staff contact Gerardo Rios, Chief of our Permits Office at (415) 972-3974, to discuss how to ensure a smooth transition for those permits. Please contact Matt Haber at (415) 947-4154 if you have any other questions related to this matter.

Sincerely,


for Wayne Natri
Regional Administrator

Attachment

cc: Barbara Baird, AQMD
Mohsen Nazemi, AQMD
Michael Tollstrup, ARB

Westlaw

68 FR 19371-02
68 FR 19371-02, 2003 WL 1903247 (F.R.)
(Cite as: 68 FR 19371)

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RULES and REGULATIONS
ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-7485-3]

Prevention of Significant Deterioration; Notice of Withdrawal of Delegation of Authority; Bay Area Air Quality Management District; Kern County Air Pollution Control District; Nevada Division of Environmental Protection; San Diego County Air Pollution Control District; Santa Barbara County Air Pollution Control District; Shasta County Air Quality Management District; South Coast Air Quality Management District; and Washoe County District Health Department

Monday, April 21, 2003

*19371 AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of withdrawal of delegation of PSD permitting authority.

SUMMARY: This document is to inform interested parties that, by letters dated March 3, 2003, the Regional Administrator of EPA, Region 9, has rescinded the Region's delegations of authority to issue federal Prevention of Significant Deterioration (PSD) permits to the following agencies in California and Nevada: Bay Area Air Quality Management District; Kern County Air Pollution Control District; Nevada Division of Environmental Protection; San Diego County Air Pollution Control *19372 District; Santa Barbara County Air Pollution Control District; Shasta County Air Quality Management District; South Coast Air Quality Management District; and Washoe County District Health Department.

DATES: The letters withdrawing delegation to these jurisdictions specify that the rescission of the PSD delegations is effective on March 3, 2003.

ADDRESSES: You can inspect copies of the delegation agreements and Region 9's letters rescinding each delegation agreement at our Region IX office during normal business hours. Due to security procedures, please call Curt Taipale at 415-972-3966 at least one day in advance of inspecting these documents at our office: Permits Office (AIR-3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

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Attachment 2

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You may also see copies of the pertinent delegation agreement and rescission letter at the following locations:

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Kern County Air Pollution Control District, 2700 "M" Street, Suite 302, Bakersfield, CA 93301-2370.

Nevada Division of Environmental Protection, Bureau of Air Pollution Control, 333 West Nye Lane, Carson City, NV 89706.

San Diego Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123-1096.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive B-23, Goleta, CA 93117.

Shasta County Air Quality Management District, 1855 Placer Street, Suite 101, Redding, CA 96001-1759.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765-4182.

Washoe County District Health Department, Air Quality Management Division, 401 Ryland Street, Suite 331, Reno, Nevada 89502.

FOR FURTHER INFORMATION CONTACT: Gerardo Rios, EPA Region IX, (415) 972-3974, or send e-mail to rios.gerardo@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Background

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(Cite as: 68 FR 19371)

In 1978, EPA published final regulations at 40 CFR 52.21, implementing the PSD program required under Part C of the Clean Air Act, 42 U.S.C. 7475-7479. See 43 FR 26403 (June 19, 1978). The PSD regulations provide authority to EPA to delegate the responsibility for conducting PSD source review to a State or local air pollution control agency. 40 CFR 52.21(u). In general, delegations are implemented through agreements between EPA Regions and state or local air pollution control agencies. These agreements are in essence contracts between the Agency and permitting agencies, setting out the responsibilities of each in carrying out the federal PSD program for that jurisdiction. The specific elements of delegation agreements vary to take into consideration particular circumstances, such as legal restrictions that may apply in a specific jurisdiction.

Pursuant to its authority under § 52.21(u), Region 9 entered into delegation agreements with the following permitting agencies on the date specified: Bay Area Air Quality Management District--April 23, 1986; Kern County Air Pollution Control District--August 12, 1999; Nevada Division of Environmental Protection--May 27, 1983; San Diego County Air Pollution Control District--November 21, 1985; Santa Barbara County Air Pollution Control District--August 21, 1985; Shasta County Air Quality Management District--July 8, 1985; South Coast Air Quality Management District--January 15, 1997; and Washoe County District Health Department--April 9, 1985. Region 9 published notices of the delegation agreements in the Federal Register at various dates.

On December 31, 2002, EPA published its Final Rule significantly revising 40 CFR 52.21. 67 FR 80186 (Dec. 31, 2002). The revised rules were effective on March 3, 2003.

Since publication of the revised PSD rules, Region 9 has consulted with each of the California permitting agencies that implemented 40 CFR 52.21 pursuant to a delegation agreement and with the California Air Resources Board (CARB). The permitting agencies and CARB have informed Region 9 that they are unable to implement 40 CFR 52.21 as revised without making changes to California law and/or local regulations. Region 9 has also discussed the issue with the Nevada Division of Environmental Protection, who indicated that changes to Nevada law would be necessary for either NDEP or the Washoe County District Health Department to implement the revisions to 40 CFR 52.21.

As the California and Nevada permitting agencies identified above did not believe that their current law would allow them to implement revised 40 CFR 52.21, Region 9 will resume issuing federal PSD permits as of the date the revisions to 40 CFR 52.21 take effect. Region 9 has issued a letter to each permitting agency in the Region that is implementing 40 CFR 52.21 pursuant to a delegation agreement, advising the permitting agencies that the delegation of federal PSD permitting authority would be rescinded effective March 3, 2003. A copy of each letter rescinding the PSD delegation of authority is available for inspection and copying at the addresses provided above.

EPA's withdrawal of authority to implement the federal PSD permitting program does not affect permitting requirements under state or local law. Companies should continue to work with their state or local permitting agencies to ensure that state or local permitting requirements are met.

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II. EPA Action

We have written letters rescinding the delegation agreements to implement the regulations at 40 CFR 52.21 for the following California permitting agencies: Bay Area Air Quality Management District; Kern County Air Pollution Control District; San Diego County Air Pollution Control District; Santa Barbara County Air Pollution Control District; Shasta County Air Quality Management District; and South Coast Air Quality Management District. We have written a letter rescinding the delegation agreements to implement the regulations at 40 CFR 52.21 for the following Nevada permitting agencies: Nevada Division of Environmental Protection; Washoe County District Health Department.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental regulations, Reporting and recordkeeping requirements.

Dated: April 2, 2003.

Alexis Strauss,

Acting, Regional Administrator, Region IX.

[FR Doc. 03-9621 Filed 4-18-03; 8:45 am]

BILLING CODE 6560-50-P

68 FR 19371-02, 2003 WL 1903247 (F.R.)

END OF DOCUMENT

BOARD MEETING DATE: February 7, 2003

AGENDA NO. 29

PROPOSAL:

Authorize the Executive Officer to Seek Equivalency from U.S. EPA Regarding Recent Revised Regulations Governing Prevention of Significant Deterioration; and If Not Granted, Terminate PSD Delegation Agreement

SYNOPSIS:

On December 31, 2002, U.S. EPA published final revised regulations governing the NSR programs mandated by Part C and D of Title I of the Clean Air Act for attainment and non-attainment areas, respectively. AQMD has a deadline of March 3, 2003, to receive new delegation from U.S. EPA to implement the revised regulations for Prevention of Significant Deterioration (PSD) for attainment pollutants, namely NO₂ and SO₂. This action proposes to authorize the Executive Officer to request from U.S. EPA to recognize AQMD's Regulation XVII - PSD to be as stringent as, and therefore equivalent to, U.S. EPA's revised regulations. This action also proposes that in case U.S. EPA does not find AQMD's Regulation XVII - PSD equivalent to their revised PSD regulations, to authorize the Executive Officer to not request any further delegation and allow U.S. EPA to terminate AQMD's PSD delegation agreement and become the permitting agency for PSD sources in the South Coast district

COMMITTEE:

Not Applicable

RECOMMENDED ACTION:

1. Authorize the Executive Officer to request from U.S. EPA recognition that AQMD's Regulation XVII - PSD is as stringent, and therefore equivalent to, the U.S. EPA's revised PSD regulations published in the Federal Register on December 31, 2002.
2. Authorize the Executive Officer, in the event that U.S. EPA does not find AQMD's Regulation XVII - PSD to be equivalent to their revised PSD regulations, to not request any further delegation and allow U.S. EPA to terminate AQMD's PSD delegation agreement and become the permitting agency for PSD sources in AQMD.

Barry R. Wallerstein, D.Env.
Executive Officer

Background

The federal Clean Air Act, Title I, Part C and U.S. EPA regulations 40 CFR Part

52.21 require that areas meeting National Ambient Air Quality Standards (NAAQS) for any criteria pollutant (i.e. "attainment" areas) have a major source NSR program called Prevention of Significant Deterioration (PSD). AQMD adopted Regulation XVII - PSD in October 1988 (subsequently amended in January 1989 and August 1999) to implement the requirements of the federal PSD program. In January 1997, U.S. EPA signed a delegation agreement ("Delegation") with AQMD to agree to the delegation of authority, from U.S. EPA to AQMD for the implementation of the provisions of the federal PSD program (40 CFR Part 52.21). As part of that Delegation U.S. EPA also determined that AQMD Regulation XVII generally met the requirements of PSD program; and that therefore permits issued by AQMD in accordance with Regulation XVII will be deemed to meet federal PSD permit requirements pursuant to the provisions of the Delegation.

In July 1996, U.S. EPA proposed revisions to the NSR rules (both PSD and non-attainment NSR). Subsequently, on December 31, 2002, U.S. EPA published revised NSR rules in the final form for both PSD and non-attainment NSR programs and made them mandatory. The final revisions mainly impact applicability determinations for modifications and include changes to emission calculations for Baseline Emission Determinations and Actual Emissions-to-Future Actual Emissions Methodology, as well as other changes for Plantwide Applicability Determinations, Clean Units and Pollution Control Projects. At the same time in December 2002, U.S. EPA also published some "proposed" changes to the NSR rules for Routine Maintenance, Repair and Replacement, on which U.S. EPA is soliciting comments before making them final rules. Presently, the South Coast area meets NO₂, SO₂ and lead (Pb) NAAQS, and therefore is designated as being in attainment of the federal standards for all three of those criteria pollutants.

In its December 31, 2002 final rules for the PSD program, U.S. EPA has included a final date of March 3, 2003 (i.e. 60 days after final rules publication date of December 31, 2002) for permitting agencies to implement the revised PSD rules. U.S. EPA Region IX has now informed us that our Delegation and Regulation XVII do not authorize AQMD to implement the revised PSD rules. Therefore, AQMD needs to either seek a new delegation agreement to implement the revised PSD rules either directly or through amendments to Regulation XVII or U.S. EPA will terminate our PSD Delegation at which time U.S. EPA will be responsible to issue PSD permits to PSD sources in AQMD.

Proposal

U.S. EPA's final NSR rule revisions make it mandatory to implement the final revisions for PSD by March 3, 2003 and for non-attainment NSR by January 1, 2006, respectively. The U.S. EPA's earlier proposal in 1996 was only proposing to make these changes voluntary and not mandatory. The final revisions include a number of elements that tend to relax the applicability requirements, and therefore, allow some major modifications to large sources, with potentially significant emission increases to not be subject to the federal NSR program. In response, a number of individual states, as well as organizations such as State and Territorial Air Pollution Program Administrators and Association of Local Air Pollution Control Officials (STAPPA/ALAPCO) and California Air Pollution Control Officers Association (CAPCOA) have expressed their serious concerns about the revisions and some

states have sued U.S. EPA on the changes. The Board has also authorized AQMD to sue to challenge these rules.

The federal Clean Air Act also allows a state or local permitting agency to implement a different NSR program as long as such program is as stringent or more stringent than the federal NSR program. AQMD believes that Regulation XVII - PSD is as stringent or more stringent than the U.S. EPA's revised PSD rules. Therefore, this proposal is to ask the Board to direct the Executive Officer to request from U.S. EPA Region IX recognition that AQMD's Regulation XVII - PSD is as stringent as, and grant AQMD equivalency with the revised federal PSD rules (40 CFR part 52.21). This request is being made with the notation that although AQMD is in attainment for both NO₂ and SO₂, staff still considers NO₂ as a precursor to ozone and both NO₂ and SO₂ as precursors to PM₁₀, and as a result treat them the same as non-attainment pollutants under the nonattainment NSR Rules and Regulations.

This proposal is also requesting the Board to authorize the Executive Officer, in the case that U.S. EPA does not grant equivalency to AQMD's Regulation XVII, to not request any further delegation to implement the revised federal PSD rules directly and allow U.S. EPA to terminate AQMD's PSD Delegation. Through this latter action, the U.S. EPA will become the responsible agency for issuance of future PSD permits for PSD sources in AQMD. AQMD will still issue the NSR permits for these sources. The AQMD staff does not recommend that AQMD amend its Regulation XVII to match the revised federal PSD rules, since this may result in adverse environmental impacts resulting from certain major source modifications with potentially significant emission increases not being subject to AQMD's PSD Regulations; this action could also have adverse environmental justice implications at a time when AQMD is implementing significant enhancements to its environmental justice program. Allowing U.S. EPA to implement the PSD program directly will also allow time to address pending and potential litigations and to clarify some of the confusion surrounding these rule changes.

Recommendations

Based on the above discussion and the upcoming deadline of March 3, 2003 imposed on AQMD by U.S. EPA for the implementation of the revised PSD rules, it is recommended that the AQMD Governing Board :

1. Authorize the Executive Officer to request from U.S. EPA to recognition that AQMD's Regulation XVII - PSD is as stringent, and therefore equivalent to, the U.S. EPA's revised PSD regulations published in the Federal Register on December 31, 2002
2. Authorize the Executive Officer, in the event U.S. EPA does not find AQMD's Regulation XVII - PSD to be equivalent to their revised PSD regulations, to not request any further delegation and allow U.S. EPA to terminate AQMD's PSD delegation and become the permitting agency for PSD sources in AQMD.

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